

United States General Accounting Office Washington, DC 20548

April 22, 2004

The Honorable Patrick J. Leahy Ranking Minority Member Committee on the Judiciary United States Senate

The Honorable Charles E. Schumer Ranking Minority Member Subcommittee on Administrative Oversight and the Courts Committee on the Judiciary United States Senate

Subject: Information on Selected Personnel Practices at the Justice Department

Dear Senator Leahy and Senator Schumer:

This letter responds to your request that we provide information on selected personnel practices at the Justice Department. On March 1, 2004, we briefed your office on the results of our review. This letter transmits information provided during that briefing. Specifically, the slides enclosed in this letter describe (1) Justice's hiring processes for entry-level and lateral (i.e., experienced)¹ career attorneys, (2) the types of monetary awards Justice grants to political appointees² and the number of awards granted from 1993 through 2002, and (3) Justice's selection process for the position of the Assistant Attorney General for Administration.

Summary

Justice hires entry-level attorneys through the Attorney General's Honors Program. Conducted on an annual basis, the program is the only way that Justice hires graduating law students. Nine Justice components participate in this program, which include the six litigating divisions (Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax), the Federal Bureau of Prisons (BOP), the Executive Office for Immigration Review (EOIR), and the U.S. Trustees Office.

¹Lateral attorneys are those who have had a law degree for at least 1 year and are active members of the bar.

²Political appointments are generally made by the administration in office to support and advocate the President's political goals and policies. They are noncareer appointments—that is, they are noncompetitive and are not generally subject to the rules for competition that govern career appointments. Political appointees fill positions in the executive branch under various types of appointments. For example, they may hold Schedule C positions, obtain noncareer appointments to the Senior Executive Service (SES), or be presidential appointees.

³With the exception of the EOIR and BOP, the Honors Program appointments are for permanent attorney positions. EOIR hires applicants for 1- or 2-year clerkships, while BOP hires applicants for 2-year fellowships.

Under the direction and management of the Office of Attorney Recruitment and Management (OARM), the components are responsible for various aspects of the five-step hiring process. Justice's hiring of lateral attorneys, which occurs on a year-round basis, is a largely decentralized process that involves Justice's 40 components and individual units (i.e., sections or branches) within those components. Each component and unit devises its own process for accomplishing lateral hiring.

Justice grants two types of monetary awards to political appointees under Schedule C and noncareer Senior Executive Service (SES) status in recognition of overall high-level performance or a special act or service. Granted in the form of lump-sum cash, the two types of awards are (1) the Special Achievement Award for Sustained Superior Performance and (2) the Special Achievement Award for Special Act or Service. From 1993 through 2002, Justice granted a total of 49 monetary awards, at an average award amount of \$1,817. The average annual award amount ranged from \$375 in 1996 to \$3,868 in 2002.

Justice's selection of an Assistant Attorney General for Administration is based on its merit competition process. That is, the vacancy is announced publicly for a minimum of 14 days. Application screening and candidate selection follow a set of predetermined eligibility requirements based on position qualifications (see apps. I and II). An Executive Resources Board, composed of three SES members nominated by the Deputy Attorney General, selects the best-qualified candidates. These candidates are interviewed by either the Deputy Attorney General or a panel of SES members. The successful candidate is approved by the Attorney General—subject to the President's approval—and certified by the Office of Personnel Management (OPM).

Scope and Methodology

To obtain a general understanding of Justice's hiring processes for entry-level and lateral career attorney positions, we examined relevant documentation and interviewed Justice officials from OARM, the Office of the Deputy Attorney General, and the Justice Management Division. To gain a more in-depth understanding of Justice component roles and responsibilities in these hiring processes, we relied primarily on interviews with officials in four litigating divisions—Antitrust, Civil, Civil Rights, and Environment and Natural Resources. We selected these divisions because they do the majority of entry-level hiring within the Attorney General's Honors Program. In addition, we obtained data on aspects of Justice's entry-level hiring process for its 2003 hiring cycle, such as the number of applications Justice received and the number of candidates Justice interviewed. Because we used these data for illustrative purposes only, we did not verify their reliability.

⁴Schedule C appointee positions, which are graded GS-15 and below, are those that involve determining policy or require a close, confidential relationship with the agency head or other key officials of the agency. Noncareer SES appointee positions are those that normally involve advocating, formulating, and directing the programs and policies of the Administration.
⁵ No awards were granted from 1999 through 2001.

⁶We excluded EOIR and BOP from our selection because, as we noted earlier, these agencies hire only for 1- to 2-year clerkships. The other seven Justice participating components hire attorneys on a full-time basis, pending passage of a bar examination.

To determine the types of monetary awards Justice grants to political appointees, we reviewed applicable laws and regulations and Justice and OPM policies, procedures, and guidelines governing Justice's authority in granting monetary awards to political appointees. We also interviewed Justice and OPM officials on the types of monetary awards Justice grants to political appointees. In addition, we obtained and analyzed data from OPM's Central Personnel Database File (CPDF)⁷ on the number of monetary awards Justice granted to political appointees from 1993 through 2002. Working with OPM and Justice officials, we were able to verify the accuracy of the CPDF awards data.

To determine Justice's selection process for the position of the Assistant Attorney General for Administration, we reviewed relevant statutory provisions governing the hiring and selection of SES members. We also reviewed Justice's policies and procedures, including the requirements of the position and the criteria involved in the selection process and interviewed Justice officials. In addition, we obtained data on aspects of the selection process for its most recent hiring cycle, such as the number of applications received and the number of final candidates that Justice interviewed for the position. Because we used these data for illustrative purposes only, we did not verify their reliability.

We conducted our work from June 2003 through April 2004 in accordance with generally accepted government auditing standards.

We provided the Department of Justice with a draft of this report and incorporated its comments as appropriate.

As agreed with your offices, unless you announce the contents of this report earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time, we will send copies to Senator Orrin G. Hatch, Chairman, Senate Judiciary Committee; Senator Jeff Sessions, Senate Subcommittee on Administrative Oversight and the Courts; and the Honorable John Ashcroft, Attorney General, Department of Justice. We will make copies available to others on request. In addition, the report will be available on GAO's Web site at http://www.gao.gov.

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⁷The CPDF is a database that contains individual records for most executive branch federal agencies and is the primary governmentwide source for information on federal employees.

The position of Assistant Attorney General for Administration is an SES position.

⁹Justice's most recent hiring cycle for this position occurred in 2002.

If you or your staff have questions regarding this report, please contact me at (202) 512-8777 or by e-mail at jonespl@gao.gov or William Crocker III at (202) 512-4533 or by email at crockerw@gao.gov. Key contributors to this report were David Alexander, Geoffrey Hamilton, Brenda Rabinowitz, John Vocino, Greg Wilmoth, Su Jin Yon, and Kathryn Young.

Sincerely yours,

Paul Jones Director, Homeland Security and Justice Issues

Enclosure



Information on Selected Personnel Practices at the Justice Department



As agreed, our objectives were to

- (1) identify Justice's hiring process for entry-level and lateral career attorney positions,
- (2) determine the types of monetary awards Justice grants to political appointees and the number of awards Justice granted from 1993 through 2002, and
- (3) identify Justice's selection process for the position of the Assistant Attorney General for Administration.



Scope and Methodology

To identify Justice's hiring process for entry-level and lateral career attorney positions, we

- obtained and reviewed available documentation on Justice's policies, procedures, and guidelines;
- interviewed officials from Justice's Office of Attorney Recruitment and Management (OARM), Justice Management Division (JMD), and Office of the Deputy Attorney General (ODAG); and
- interviewed officials in four litigating divisions—Antitrust, Civil, Civil Rights, and Environment and Natural Resources (ENRD).



Scope and Methodology (cont.)

To determine the types of monetary awards Justice grants to political appointees and the number of awards Justice granted from 1993 through 2002, we

- researched and reviewed applicable laws and regulations governing Justice's authority in granting monetary awards to political appointees and reviewed applicable OPM and Justice policies, procedures, and guidelines;
- interviewed Justice and OPM officials on the types of monetary awards Justice granted to political appointees, including how they were granted; and
- obtained and analyzed data from OPM's Central Personnel Database File (CPDF) on the number of monetary awards Justice granted to political appointees from 1993 through 2002.



Scope and Methodology (cont.)

To identify Justice's selection process for the position of the Assistant Attorney General for Administration, we

- obtained and reviewed relevant statutory provisions governing the hiring and selection of SES members;
- interviewed Justice officials; and
- reviewed Justice's policies and procedures, including the requirements of the position and the criteria involved in the selection process.

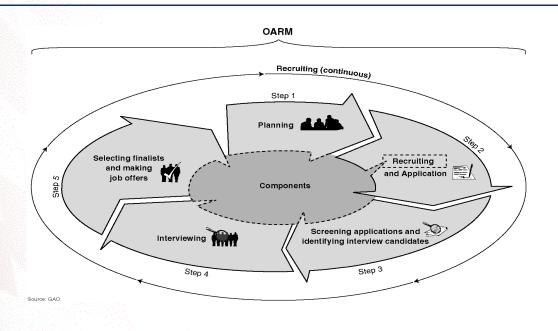


Justice Hires Entry-Level Attorneys through the Attorney General's Honors Program

- The Attorney General's Honors Program (Honors Program) is Justice's annual hiring and recruitment effort for full-time entry-level attorneys:
 - The program is the only way Justice hires graduating law students.
 - Selected candidates who have passed a bar examination are hired as permanent attorneys at the time of acceptance into the program.
- Nine components participate in the program—the six litigating divisions (Antitrust, Civil, Civil Rights, Criminal, ENRD, and Tax), the Federal Bureau of Prisons, the Executive Office for Immigration Review, and the U.S. Trustees Office.
- The program is administered and directed by OARM and implemented by each component through a five-step process.



The Honors Program Involves a Five-Step Process





The Honors Program Five-Step Hiring Process— Step 1: Planning

- Components submit to OARM estimates of the number of position openings, based on their individual hiring budgets:
 - For the 2003 cycle, the components submitted 130 positions.
- OARM notifies the components of the number of interviews that have been budgeted.
 - For the 2003 cycle, OARM allowed for 650 interviews within the components.



The Honors Program Five-Step Hiring Process— Step 2: Recruiting and Application

OARM manages the recruiting aspects of the Honors Program, with some component participation:

- OARM publicizes the program nationwide and promotes the program on OARM's Web site.
- OARM organizes an annual outreach effort to law schools, involving senior (Assistant Attorney General and Deputy Attorney General Offices) and component-level participation.
- Officials from individual components, such as section chiefs or senior or junior attorneys, may organize their own recruiting efforts at job fairs, schools, or association groups.



The Honors Program Five-Step Hiring Process—Step 2: Recruiting and Application (cont.)

OARM manages the application aspects of the Honors Program:

- OARM accepts applications only through its online applications system applicants may designate up to nine preferences for job placement.
- OARM reviews the applications for minimum eligibility requirements (e.g., must be a third-year law student).
 - For the 2003 cycle, OARM reviewed 3,286 applications. Of those, 3,219 met minimum eligibility requirements.
- OARM refers to the components a list of applicants, based on applicant preferences. Accordingly, an applicant could be referred to up to nine components.
 - For the 2003 cycle, the Civil Division had the most applications referred, followed by the Civil Rights and Criminal Divisions.



The Honors Program Five-Step Hiring Process— Step 3: Screening Applications and Identifying Interview Candidates

The components are responsible for screening applications and identifying interview candidates, subject to departmental review. The means through which these components implement these steps vary as shown in the following examples:

- Antitrust Division forms 12 teams (2 members each with junior and senior attorneys) that are nominated by the section chiefs.
- ENRD forms a 15-member hiring committee and uses 3 members—generally, one line attorney, one career Deputy Assistant Attorney General (DAAG), and one noncareer DAAG.
- Civil Division branches individually determine the means for implementing this step.
- Civil Rights Division forms a 5-member hiring committee—one DAAG, one senior counsel, two section chiefs, and a deputy section chief.



The Honors Program Five-Step Hiring Process— Step 3: Screening Applications and Identifying Interview Candidates (cont.)

- The components send to OARM a list of candidates they selected for interviews:
 - For the 2003 cycle, OARM received a list of 635 candidates from the components.
- OARM forwards the list of candidates to a departmental screening committee consisting of officials from the Offices of the Deputy Attorney General (ODAG), the Associate Attorney General, and the Attorney General.
- The departmental screening committee may remove candidates from the list
 - For the 2003 cycle, the committee removed 5 candidates for reasons relating to academic qualifications.
- The components have a 3-day period in which to appeal a removal. However, according to ODAG, none of the 5 removals were appealed.



The Honors Program Five-Step Hiring Process— Step 4: Interviewing Candidates

Each component determines the appropriate method for interviewing program candidates, subject to certain requirements. For example,

- Antitrust Division uses a 3-member team (a senior-level manager and senior or junior attorneys).
- ENRD uses 15-member hiring team in groups of 3 (senior-level managers and junior attorneys).
- · Civil Division branches individually determine the means for interviewing.
- Civil Rights Division uses 2 to 3 members from its hiring team (at least one DAAG or senior counsel and a section chief).
- According to Antitrust, Civil Rights, and ENRD officials, a senior official from the division's Assistant Attorney General's Office, such as the DAAG, must attend all interviews.
- Interviews are conducted at Justice headquarters in Washington, D.C., at Justice's expense.



The Honors Program Five-Step Hiring Process— Step 5: Selecting Finalists and Making Job Offers

- The components are responsible for selecting finalists. For example,
 - Antitrust Division uses a 6-member selection team (section chiefs, assistant section chiefs, or DAAG) to rank candidates in order of preference.
 - ENRD uses its 15-member hiring team to vote on finalists.
 - Individual Civil Division branches determine the means for selecting finalists.
 - Civil Rights Division uses its 5-member hiring team to select finalists.
 - All four divisions must submit finalists' names to the Assistant Attorney General (AAG) for approval.
- OARM is responsible for performing preliminary background checks or "suitability determinations" and making official offers.



Justice's Hiring Process for Lateral Attorneys Is Decentralized among and within Its 40 Components

According to OARM officials, individual components are responsible for hiring lateral attorneys (i.e., those who have had a law degree for at least 1 year and are active members of the bar)

- Each component is responsible for creating vacancy announcements and advertising position vacancies.
 - In Antitrust, Civil, Civil Rights, and ENRD, for example, personnel units advertise position vacancies—components are required to advertise the position on the Justice Intranet Web site. They may also use other sources, such as professional legal publications, and the Internet, for advertising.
- Applicants may apply in response to a specific vacancy announcement or on an unsolicited basis.



Justice's Hiring Process for Lateral Attorneys Is Decentralized among and within Its 40 Components

Each component or individual unit (i.e., section or branch) receives applications and identifies potential interviewees. For example,

- In Antitrust, Civil, and ENRD, the section chief or branch director receives applications either directly from the applicant or from the personnel unit and is primarily responsible for identifying potential interviewees.
- In the Civil Rights Division, the DAAG receives the applications from the personnel unit and with the concurrence of the Principal DAAG identifies a list of potential interviewees. The section chiefs may also review the applications and identify potential interviewees, subject to the DAAG's review.



Justice's Hiring Process for Lateral Attorneys Is Decentralized among and within Its 40 Components (cont.)

Interviewing applicants and selecting finalists occur at the unit level. For example,

- Within the Antitrust Division's sections, the assistant section chief or section chief usually interviews the candidates; the section chief determines the finalists.
- Within ENRD, some sections establish hiring panels of several attorneys composed of junior- and senior-level attorneys, while others use senior-level managers, such as assistant section chiefs or deputy section chiefs.
- Within the Civil Rights Division, some sections conduct both preliminary and final interviews. Preliminary interviews may be conducted by a deputy chief or senior attorney, while final interviews may be conducted by a section chief or DAAG.



Justice's Hiring Process for Lateral Attorneys Is Decentralized among and within Its 40 Components (cont.)

- Final review occurs at the division level. For example,
 - Within the Antitrust and Civil Divisions, the sections or branches forward their final selection to the respective DAAG. Once reviewed, the DAAG forwards the final selection to the AAG for approval.
 - Within ENRD, the sections forward their final selection to the DAAG. Once reviewed, the DAAG forwards the final selection to the AAG for approval.
 - Within the Civil Rights Division, the sections forward their final selection to the DAAG, who then forwards the final selection to the Principal DAAG.
 Once reviewed, the Principal DAAG forwards the final selection to the AAG for approval.
- OARM is responsible for performing preliminary background checks or "suitability determinations" and making official offers.



Justice Grants Two Types of Monetary Awards to Political Appointees

Justice grants two types of monetary awards to two types of political appointees:

- Special Achievement Award for Sustained Superior Performance awarded to appointees *under Schedule C status* in recognition of superior performance of an assigned task for a sustained period.
- Special Achievement Award for Special Act or Service—awarded to appointees under noncareer SES and Schedule C status in recognition of a special act or service in the public interest in connection with or related to official employment.



Authority and Criteria for the Two Types of Monetary Awards Justice Grants to Political Appointees

| | Special Achievement Award for Sustained Superior Performance | Special Achievement Award for Special Act or Service |
|---------------------|---|---|
| Eligibility | Schedule C | Schedule C and noncareer SES |
| Statutory authority | 5 U.S.C. 4505 (a) | 5 U.S.C. 4503 |
| Basis for award | Superior performance of assigned tasks sustained for a period of time | Special act or service in the public interest in connection with or related to official employment |
| | Performance of one or more important job elements in a manner clearly exceeding normal requirements for at least 6 months | |
| Form of award | Cash—onetime, lump-sum | Cash—onetime, lump-sum |
| Award ceilings | May not exceed 10 percent of the employee's annual rate of basic pay; in exceptional cases, can be up to 20 percent subject to the Attorney General's approval. | May not exceed 10 percent of the employee's annual rate of basic pay; in exceptional cases, can be up to 20 percent subject to the Attorney General's approval. |
| | Additionally, awards up to \$10,000 subject to the Attorney General's approval; awards over \$10,000 subject to OPM approval. | Additionally, awards up to \$10,000 subject to the Attorney General's approval; awards over \$10,000 subject to OPM approval. |



Authority and Criteria for the Two Types of Monetary Awards Justice Grants to Political Appointees (cont.)

| | Special Achievement Award for Sustained Superior Performance | Special Achievement Award for Special Act or Service |
|-----------------------------------|---|---|
| Conditions for receiving an award | •Recipients must have been on a performance work plan for at least 90 days and have current performance ratings indicating that their performance meets the requirements of the position. | •Recipients must have been on a performance work plan for at least 90 days and have current performance ratings indicating that their performance meets the requirements of the position. |
| | Recipient may not receive both a Special Achievement Award for Sustained Superior Performance and a Quality Step Increase for the same period of performance. | Recipient may receive a Special Achievement Award for Special Act or Service and either a Special Achievement Award for Sustained Superior Performance or a Quality Step Increase in recognition of the |
| | Recipient must not have received another cash performance award within the 6 months preceding the date of nomination. | same contribution. Therefore, the same contribution may not be rewarded with both types of monetary awards and a Quality Step Increase. |



Justice Follows a Five-Step Process for Granting Monetary Awards to Political Appointees

- Step 1: Supervisor nominates candidate:
 - completes written documentation, such as performance rating or other justification
 - forwards written documentation to component head
- Step 2: Component head approves or disapproves supervisor's recommendation:
 - if approved, forwards recommendation to Justice's Office of the White House Liaison
- Step 3: White House Liaison Office reviews written documentation:
 - forwards written documentation along with its own recommendations to the Attorney General (AG)
- Step 4: Attorney General reviews recommendations and makes final determination.
- Step 5: Office of the Attorney General notifies component head of decision and White House Liaison Office coordinates with personnel staff.

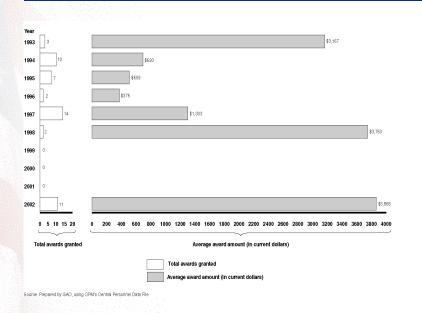


Justice Granted a Total of 49 Monetary Awards from 1993 through 2002

- Total amount awarded—\$89,024
- Average award amount—\$1,817
- Average number of awards granted—5 per year



Number of Monetary Awards Granted and Average Annual Award Amounts From 1993 through 2002



Range of annual awards granted from 1993 through 2002^a

 A low of 2 awards in 1996 and 1998 to a high of 14 awards in 1997

Range of average annual award amounts from 1993 through 2002^a

 A low of \$375 in 1996 to a high of \$3,868 in 2002

^a No monetary awards were granted from 1999 through 2001.



Justice Granted a Total of Two Monetary Awards to Political Appointees during a Presidential Election Period

- Political appointees under Schedule C and noncareer SES status are prohibited by law (5 U.S.C. 4508) from receiving monetary awards during a presidential election period. A presidential election period is the period beginning on June 1 of the election year and ending on the following January 20.
 - Justice granted two monetary awards with respect to these two types of political appointees during the presidential election period that began on June 1, 1996, and ended on January 20, 1997.
 - Justice officials said that these awards were granted in error. They stated that since that time, Justice has implemented safeguards that would help to prevent errors in the future.



Justice's Selection of the Assistant Attorney General for Administration Is Based on a Merit Competition Process

- Vacancy is announced and applications are submitted
 - Announcement is posted for a minimum of 14 days through various sources, such as OPM ("USAJOBS") and Justice Web sites.
 - For the most recent cycle, 33 applicants applied for the position.
- Applications are screened
 - Human resource specialists in Justice Management Division screen applications to:
 - ensure applications have been received in a timely manner.
 - verify applicants are within area of consideration (i.e., the organizational or geographic boundaries within which a search is made for eligible candidates to be considered for the position).
 - determine if applicants meet minimum eligibility requirements based on the technical qualifications (see app. I for technical qualifications).



Justice's Selection of the Assistant Attorney General for Administration Is Based on a Merit Competition Process

- Applications are screened (cont.)
 - For the most recent cycle, 30 applicants met the minimum eligibility requirements; of those, 6 were "reassignment eligible"; that is, competition for best qualified was not required because the applicant had already competed for and currently holds, or has held, a position equivalent to the one being filled.
- Candidates are reviewed by an Executive Resources Board (ERB)
 - Justice convenes an ERB, which consists of three SES members, nominated by the Deputy Attorney General (DAG).
 - For the most recent cycle, the ERB consisted of two Justice noncareer and one career executive.
 - ERB evaluates candidates' merits based on technical and executive core qualifications (see app. II for executive core qualifications).



Justice's Selection of the Assistant Attorney General for Administration Is Based on a Merit Competition Process

- Candidates are reviewed by ERB (cont.)
 - ERB rates and ranks candidates to develop best qualified list that will be reviewed for further consideration.
 - For the most recent cycle, 6 candidates were selected as best qualified; another 6 were reassignment eligible.
 - ERB submits best-qualified list and accompanying written recommendations to the selecting official, the DAG.
- Candidates are interviewed and selected by the DAG
 - DAG interviews the candidates alone or convenes SES panel for interviewing.
 - For the most recent cycle, 12 candidates were interviewed.
 - DAG selects one candidate and forwards the name to the AG for approval.



Justice's Selection of the Assistant Attorney General for Administration Is Based on a Merit Competition Process

- Candidate is approved by the AG
- Qualifications are certified by an OPM Qualifications Review Board (QRB)
 - OPM establishes a QRB to certify that the candidate has the requisite executive qualifications before appointment.
- Candidate is approved by the President

Appendix I



Technical Qualifications Required for Position of Assistant Attorney General for Administration

- The ability to direct the planning, implementation, integration, operation, and evaluation of budget and management of major administrative programs in a cabinet-level department.
- The ability to serve as Justice's representative on administrative matters with senior department staff, congressional representatives, external federal and state agency officers, and private industry officials.
- The ability to provide advice and assistance to senior departmental staff on a broad range of administrative matters, with particular emphasis on organizational and management improvement.
- Experience in the management of a large and complex organization with diverse personnel.

Appendix II



Executive Core Qualifications Required for Position of Assistant Attorney General for Administration

- **Leading change**—the ability to develop and implement an organizational vision that integrates key national and program goals, priorities, values, and other factors.
- **Leading people**—the ability to design and implement strategies that maximize employee potential and foster high ethical standards in meeting the organization's vision, mission, and goals.
- Results driven—the ability to make timely and effective decisions and produce results through strategic planning and the implementation and evaluation of programs and policies.

Appendix II



Executive Core Qualifications Required for Position of Assistant Attorney General for Administration (cont.)

- **Business acumen**—the ability to acquire and administer human, financial, material, and information resources in a manner that instills public trust and accomplishes the organization's mission, and to use new technology to enhance decision making.
- Building coalitions/communication—the ability to explain, advocate, and express
 facts and ideas in a convincing manner and negotiate with individuals and groups
 internally and externally. Also involves the ability to develop an expansive
 professional network with other organizations and the ability to identify the internal
 and external politics that impact the work of the organization.